STATE OF MICHIGAN

COURT OF APPEALS

In the Matter of JESSE FLINT, Minor.

MANCHESTER PUBLIC SCHOOLS,

Petitioner-Appellee,

V

LORI FLINT,

Respondent-Appellant.

UNPUBLISHED
September 30, 2003

No. 240251
Washtenaw Circuit Court
Family Division
LC No. 01-025142-NA

Before: Owens, P.J., and Cavanagh and Meter, JJ.

PER CURIAM.

Respondent appeals as of right from a trial court order exercising jurisdiction over respondent's minor child. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Respondent contends that the trial court erred in assuming jurisdiction over the minor child. In *In re CR*, 250 Mich App 185, 200-201; 646 NW2d 506 (2001), we explained:

> At the adjudication, the petitioner . . . must prove one or more of the allegations in the petition that indicate that the children who are the subject of the proceeding come within the family court's jurisdiction, as defined by MCL 712A.2(b). This proof must meet the preponderance standard and must rely on legally admissible evidence. If the family court finds evidence of abuse and neglect proved by a preponderance of the legally admissible evidence presented at the adjudication, it then proceeds to the dispositional phase of the protective proceedings. [Footnotes omitted.]

In the instant matter, the purported basis for the trial court's jurisdiction was MCL 712A.2(b)(1), which allows a court to assume jurisdiction where the parent neglects to provide a proper education for the minor child.

Here, respondent presented evidence demonstrating that she went to great efforts to try to get the minor child to attend school. We are sympathetic with her challenge of raising a child with special needs as a single parent with a full-time job. But, at the time of the trial, the minor child had already missed approximately 111 out of 134 days of school. Thus, there is absolutely

no indication that respondent, despite her efforts, is ensuring that the minor child's educational needs are being met.

Moreover, we are somewhat troubled by respondent's response to the school's intervention. To be sure, respondent and petitioner's agents have some philosophical differences regarding the best method for ensuring that the minor child attends school on a regular basis. For example, it is apparent that respondent is reluctant to implement negative consequences for the minor child's conduct. Although there may be clinical support for respondent's approach, it is clear that this approach has not been effective. Given that lack of success, it is all the more appropriate that respondent attempt something new.

Instead, it appears that respondent strengthened her resolve to resist petitioner's methods. While an understandable response from a human behavior standpoint, her response is, unfortunately, contrary to the best interests of the minor child. The best interests of the minor child would be better served by respondent's full cooperation with petitioner. In addition, we agree with the trial court's observation that it is not in the minor child's best interests for him to be home schooled by petitioner, especially where this required him to be unsupervised for most of the day. This home schooling plan was plainly neglectful of the minor child's educational needs. Therefore, although respondent's efforts have had a mitigating effect and this case does not present the most severe case of educational neglect, we must nevertheless conclude that the trial court did not err in assuming jurisdiction over the minor child.

Respondent also challenges the trial court's ruling that Judith New's testimony was inadmissible based on the attorney-client privilege. We review de novo a trial court's decision regarding whether the attorney-client privilege may be asserted. *Koster v June's Trucking, Inc*, 244 Mich App 162, 166; 625 NW2d 82 (2000).

First, respondent contends that New was not acting as an attorney, but merely a lay advocate. Indeed, New testified that, although she was an attorney, the Student Advocacy Center (SAC) employed her as a lay advocate. New testified that respondent contacted the SAC because she was having difficulties getting the school to comply with a written individualized education plan for the minor child. New noted that respondent also believed that the educational plan was inadequate. New testified that she made recommendations and gave advice to respondent. In addition, New sent a letter stating that she was "writing on behalf of" the minor child. New explained that the SAC used that terminology to identify which child the document pertained to. The trial court relied on this statement in concluding that New was acting as an attorney for the minor child.

Here, we believe that reasonable minds could differ as to whether New was acting as an attorney for the minor child. Respondent certainly contacted the SAC for advice, and the advice sought and received undoubtedly included the analysis of legal issues—even if merely establishing the degree to which respondent could legally compel the school to implement the existing education plan or create a new education plan. Moreover, although New's advice was partially for respondent's benefit, underlying all of the problems presented in this case is that the minor child's education was at stake. In other words, New's advocacy was not limited to protecting respondent's interests, as in a child protection proceeding, but also promoted the welfare of the minor child. Thus, although respondent's argument is not devoid of legal merit,

we are not persuaded that the trial court erred in ruling that New was acting as an attorney for the minor child.

Respondent also contends that the trial court erred in excluding New's testimony because there were no confidential communications between the minor child and New. In *Grubbs v K Mart Corp,* 161 Mich App 584, 589; 411 NW2d 477 (1987), we opined as follows:

> The attorney-client privilege attaches to communications made by a client to the attorney acting as a legal adviser and made for the purpose of obtaining legal advice on some right or privilege. The purpose of the privilege is to allow a client to confide in his attorney, secure in the knowledge that the communication will not be disturbed. [Citations omitted.]

More importantly, we noted that "[c]ommunications made through a client's agent are privileged." *Id.* Thus, in *Grubb*, a minor child's parents' communications to the minor child's attorney were deemed privileged. *Id.* Therefore, in the instant matter, the absence of direct communications between New and the minor child did not prevent a finding that New's testimony was barred by the attorney-client privilege.

In fact, "[c]onfidential client communications, along with opinions, conclusions, and recommendations based on those communications, are protected by the attorney-client privilege because they 'are at the core of what is covered by the privilege.'" *McCartney v Attorney Gen*, 231 Mich App 722, 735; 587 NW2d 824 (1998), quoting *Hubka v Pennfield Twp,* 197 Mich App 117, 122; 494 NW2d 800 (1992), rev'd in part on other grounds 443 Mich 864 (1993). Here, the material portions of New's testimony were either respondent's communications to New or New's recommendations to respondent, all of which was for the minor child's benefit. Therefore, we are not persuaded that the trial court erred in excluding New's testimony.

Affirmed.

/s/ Donald S. Owens
/s/ Mark J. Cavanagh
/s/ Patrick M. Meter